

SUPREME COURT OF NOVA SCOTIA

Citation: *DLF Law Practice Incorporated v. McDonald*, 2024 NSSC 254

Date: 20240905

Docket: 525281

Registry: Pictou

Between:

DLF Law Practice Incorporated, a body corporate, and Donn Fraser
Plaintiffs

v.

Mary Jane McDonald, Eric Atkinson, SPI Et Pomquet Inc.,
a body corporate, Jennifer Hamilton Upham, Kate Harris, Joel Sellers,
Julie MacPhee, Mary Jane Saunders, Dennis James, Gerald Green
and 3241964 Nova Scotia Limited (previously known as
Carm Legal Services Inc.), a body corporate,
and the legal partnership known as the firm Patterson Law
Defendants

DECISION ON COSTS

Judge: The Honourable Justice Scott C. Norton

Heard: February 1, 2024, in Pictou, Nova Scotia

Decision: September 5, 2024

Counsel: Donn Fraser, self-represented
DLF Law Practice Incorporated, on its own behalf by its Officer
Donn Fraser
Michael Scott, for the Defendants Patterson Law, Dennis James, Kate
Harris, and Jennifer Hamilton-Upham
Gavin Giles, KC, for the remaining Defendants

By the Court:**Introduction**

[1] This is a decision on costs arising from an Appearance Motion on January 4, 2024 and a motion on February 1, 2024 in relation to the appointment of a case management judge in these proceedings (since consolidated). The Appearance Motion was adjourned to February 1, 2024 to decide the issue of the appointment of a case management judge. At the conclusion of the February 1, 2024 hearing, Justice Frank Hoskins ordered that a case management judge would be appointed and advised that he would give his rulings on costs at a later date.

[2] By letter dated August 9, 2024, Mr. Giles requested that Justice Hoskins provide the parties with his decision on costs. In response to Mr. Giles' letter, Mr. Fraser wrote to Justice Hoskins on August 13, with response comments, raising again his request for recusal. Justice Hoskins recused himself from these matters at the request of Mr. Fraser. As a result it would not be appropriate for him to rule on costs. As I am the appointed case management judge, I communicated to the parties on August 13 that I would make the costs decision.

[3] I have reviewed a transcript of the February 1, 2024 motion hearing and have listened to the recording of the January 4, 2024 Appearance Day motion hearing. I have reviewed the materials sent to Justice Hoskins by Mr. Fraser on August 13. I have also received and reviewed written submissions from Mr. Giles on August 14 and Mr. Fraser on September 2, 2024.

[4] In my view it is fair and appropriate to make the costs decision based primarily on the oral submissions made to Justice Hoskins regarding costs at the conclusion of the February 1 motion hearing. Justice Hoskins did not ask for supplementary briefs.

[5] The Appearance Motions were filed by Mr. Fraser in the Pictou registry to seek an order vacating the hearing date for motions filed by Mr. Giles (in the Halifax registry) for an order appointing a case management judge in each of the now consolidated proceedings. The Appearance Motions were heard by Justice Hoskins in Pictou. Mr. Fraser attended in person. Mr. Giles attended virtually by MS Teams. At the conclusion of the hearing, Justice Hoskins decided that the motion for the appointment of a case management judge would be heard by him in Pictou on February 1. The February 1 motion was heard in person in Pictou.

[6] Mr. Giles was successful on the four motions to appoint a case management judge. Mr. Fraser had advised the court at the Appearance Motion that he was not in agreement “at this time”. After the motion materials and briefs were filed, Mr. Fraser advised that he consented to the appointment of a case management judge in three of the four proceedings but maintained that no case management judge was necessary in Pic No. 521514.

[7] The hearing of the February 1 motion took just over one hour. In his oral submissions on costs, Mr. Fraser sought costs for the Appearance Motions on the basis that they were only necessary because Mr. Giles had scheduled the motions in Halifax without consulting him as to availability. He stated “I’m not oblivious to the fact that we’re probably looking at something like \$250.” On the motions for appointment of a case management judge, Mr. Fraser emphasized that he had consented to case management in three of the four proceedings and that the motions could have been dealt with by Appearance Motions. Otherwise, he suggested they should be dealt with as costs in the cause, or that the tariffs should apply.

[8] Mr. Giles referred to the fact that the consent to the appointment in the three proceedings came very late after the work was done to file motion materials and briefs. He suggested the costs should reflect the actual costs to his clients and suggested the sum of \$2,500. His submission on costs for the Appearance Motions was that it is very uncommon for costs to be awarded and as such no costs should be awarded herein.

[9] Tariff C provides that for a motion of more than 1 hour but less than ½ day, the suggested costs are \$750-\$1,000.

[10] I do not agree that the contested issue of an appointment of a case management judge in this case could have been resolved by an Appearance Motion under *Rule* 24. Although that Rule refers to the appointment of a case management judge as an example of a matter to be heard by Appearance Motion, in this case both parties filed affidavit evidence. It is clear that there were contested facts. It is clear that the motion could not be heard and determined quickly.

[11] In my view, a just and appropriate amount for costs on this motion is \$1,000. I order the Plaintiffs, jointly and severally to pay that sum to the moving parties, forthwith and in any event of the cause.

[12] With regard to the Appearance Motions of January 4, it is my view that it was reasonable for Mr. Fraser to bring those motions to vacate the motions filed in

Halifax without consulting him as required by the *Rules*. Justice Hoskins effectively gave Mr. Fraser the relief sought by rescheduling the hearing of the Halifax motions to be heard in Pictou. There is nothing in *Rule 24* that says that Appearance Motions are made without an entitlement to costs. The fact that in Halifax, Appearance Motions held every Friday at noon are dealt with expeditiously and often without an award of costs does not mean that costs cannot or should not be awarded in an appropriate circumstance. In my view it is just and appropriate to award the Plaintiffs costs in the amount of \$250 to be set off from the amount the Plaintiffs are obliged to pay.

[13] In summary, the Plaintiffs shall pay the moving parties represented by Mr. Giles the sum of \$750 forthwith.

[14] Although Mr. Scott made submissions for costs at the end of the hearing, he did not make any supplementary submissions. He was present at the February 1 hearing on a watching brief as his clients had not yet been served with the pleadings. They are not entitled to costs.

[15] Order accordingly to be prepared by Mr. Giles.

Norton, J.